

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Proposing rule making related to liquor, beer and wine and providing an opportunity for public comment

The Alcoholic Beverages Division hereby proposes to amend Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” and Chapter 5, “License and Permit Division,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 123.10, 123.49, 123.131 and 123.178 to 123.178B.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 123.49, 123.131 and 123.178 to 123.178B and 2021 Iowa Acts, House File 384.

Purpose and Summary

This proposed rule making implements changes required due to the enactment of 2021 Iowa Acts, House File 384. Specifically, the rule making proposes the following to conform with statutory changes:

- Amend rule 185—4.5(123) to allow mixed drinks or cocktails not for immediate consumption to be used to prepare mixed drinks or cocktails to go.
- Amend rule 185—4.6(123) to allow delivery of growlers of beer.
- Amend rule 185—4.10(123) to remove the prohibition of the use of disposable plastic, paper, or Styrofoam cups; remove the prohibition of the use of lids with sipping or straw holes; and allow the use of two new sealing methods.
- Amend rule 185—4.11(123) to allow delivery of growlers of wine.
- Rescind rule 185—4.33(123) because it is outdated and redundant with statute.
- Rescind rule 185—4.38(123) because it is outdated and redundant with statute.
- Amend rule 185—5.1(123) to update the allowable hours of sale on Sundays.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on February 1, 2022. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: rules@iowaabd.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 185—4.5(123) as follows:

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. ~~An on-premises~~ A class “A,” class “B,” class “C,” class “C” native distilled spirits, or class “D” liquor control licensee may mix, and store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, Iowa Code section 123.49(2)“d” and this rule.

4.5(1) Definitions.

“Immediate consumption.” ~~For the purposes of Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, “immediate consumption” is defined as means the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.~~

“Mixed drink or cocktail.” ~~A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings~~ means “mixed drink or cocktail” as defined in Iowa Code section 123.3(32).

4.5(2) Location. Mixed drinks or cocktails which are not for immediate consumption shall be mixed, and stored, and consumed on the liquor control licensed premises. ~~Mixed drinks or cocktails shall not be removed from the licensed premises.~~

4.5(3) No change.

4.5(4) Container. A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. to c. No change.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2)“e.” and “e.”

e. No change.

4.5(5) Label. A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

a. ~~Contents are defined in subrule 4.5(6).~~

~~b.~~ a. The label shall be subject to the following requirements and restrictions:

(1) to (4) No change.

(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5)“~~b~~”(4) 4.5(5)“a”(3).

(6) to (10) No change.

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5)“~~b~~,” 4.5(5)“a,” shall be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

~~e.~~ b. A licensee may access a label template on the website of the division located at www.IowaABD.com ~~abd.iowa.gov~~.

4.5(6) No change.

4.5(7) Disposal.

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of ~~the contents~~² being placed into the empty container is expired and shall be destroyed and disposed of in accordance with applicable law.

b. No change.

4.5(8) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents ~~are~~ were placed into the empty container.

(2) The time the contents ~~are~~ were placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5)“~~b~~”(4) 4.5(5)“a”(3).

(3) to (7) No change.

(8) The month, day, and year the contents of the container ~~are~~ were destroyed and disposed of or entirely consumed.

(9) The time the contents of the container ~~are~~ were destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5)“~~b~~”(4) 4.5(5)“a”(3).

(10) The method of destruction and disposal or ~~shall specify~~ that the entire contents were consumed.

(11) No change.

b. A licensee may access record-keeping forms on the website of the division located at www.IowaABD.com, ~~by sending a request by fax to (515)281-7375,~~ abd.iowa.gov or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. No change.

4.5(9) Dispensing machines. A dispensing machine which contains a mixed drink or cocktail ~~with alcoholic beverages~~ is subject to the requirements and restrictions of this rule.

4.5(10) Food safety compliance. A licensee who mixes, and stores, ~~and allows the consumption of~~ mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

4.5(11) Federal alcohol compliance. A licensee who mixes, and stores, ~~and allows the consumption of~~ mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

4.5(12) No change.

This rule is intended to implement Iowa Code ~~subsection~~ section 123.49(2) ~~as amended by 2012 Iowa Acts, House File 2465, section 22.~~

ITEM 2. Amend rule 185—4.6(123), introductory paragraph, as follows:

185—4.6(123) Filling and selling of beer in a container other than the original container. Class “B,” class “C,” and special class “C” liquor control licensees;² class “B” and class “C” beer permittees;² and the licensee’s or permittee’s employees may fill, refill, and sell beer in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa

Code section sections 123.131 as amended by 2020 Iowa Acts, House File 2540, section 14; Iowa Code section and 123.132; and this rule.

ITEM 3. Amend paragraph 4.6(4)“b” as follows:

b. A growler filled pursuant to this rule shall not be delivered or direct-shipped to a consumer.

ITEM 4. Amend rule 185—4.10(123) as follows:

185—4.10(123) Filling and selling of mixed drinks or cocktails in a container other than the original container. Class “C” and class “C” native distilled spirits liquor control licensees and the licensee’s employees may fill and sell mixed drinks or cocktails in a container other than the original container subject to the requirements and restrictions provided in 2020 Iowa Acts, House File 2540, sections 10, 11, 12, and 13, Iowa Code section 123.49(2) “d”(3) and this rule.

4.10(1) Definitions.

“*Alcoholic liquor*,” for the purposes of this rule, means “alcoholic liquor” as defined in Iowa Code section 123.3(5).

“*Mixed drink or cocktail*,” for the purposes of this rule, means “mixed drink or cocktail” as defined in Iowa Code section 123.3(32).

“*Native distilled spirits*,” for the purposes of this rule, means “native distilled spirits” as defined in Iowa Code section 123.3(34).

“*Original container*,” for the purposes of this rule, means a vessel containing alcoholic liquor or native distilled spirits that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

“*Sealed container*,” for the purposes of this rule, means a vessel containing a mixed drink or cocktail that is designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. “Sealed container” does not include a container with a lid with sipping holes or openings for straws, a cup made of plastic that is intended for one-time use, or a cup made of paper or polystyrene foam “sealed container” as defined in Iowa Code section 123.49(2) “d”(4)(a).

“*Tamper-evident*,” for the purposes of this rule, means a lid, cap, or seal that visibly demonstrates when a container has been opened “tamper-evident” as defined in Iowa Code section 123.49(2) “d”(4)(b).

4.10(2) Filling requirements.

a. and b. No change.

c. A sealed container shall be filled only with mixed drinks or cocktails composed in whole or in part with alcoholic liquor or native distilled spirits from an original container purchased from a class “E” liquor licensee.

d. No change.

4.10(3) Sealing requirements. A sealed container shall bear one of the following tamper-evident sealing methods:

a. A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container vessel is opened.

b. A screw top cap or lid that breaks apart when the container vessel is opened.

c. A vacuum or heat-sealed pouch containing the mixed drink or cocktail.

d. A lid permanently affixed to the vessel with a can seamer.

e. The vessel containing the mixed drink or cocktail is securely sealed inside a clear, transparent bag bearing a self-adhesive strip or other seal that must be broken open to remove the vessel and cannot be resealed. If the lid of the vessel bears a sipping hole or other opening for a straw, the sealing method described in this paragraph shall be the only sealing method allowed.

4.10(4) and 4.10(5) No change.

4.10(6) Restrictions.

a. A sealed container shall not be filled in advance of a sale.

b. A sealed container shall not meet the definition of “canned cocktail” as defined in Iowa Code section 123.3(11).

c. b. A licensee or a licensee’s employees shall not allow a consumer to fill a sealed container.

~~d. c.~~ The filling and selling of a sealed container shall be limited to the hours in which alcoholic beverages may be legally sold.

~~e. d.~~ A sealed container shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

4.10(7) and 4.10(8) No change.

This rule is intended to implement Iowa Code sections 123.30, 123.43A, and 123.49.

ITEM 5. Amend rule 185—4.11(123), introductory paragraph, as follows:

185—4.11(123) Filling and selling of wine and native wine in a container other than the original container. Class “C” liquor control licensees; class “B,” class “B” native, and class “C” native wine permittees; and the licensee’s or permittee’s employees may fill, refill, and sell wine or native wine in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa Code sections 123.178, 123.178A, and 123.178B ~~as amended by 2020 Iowa Acts, House File 2540, sections 4, 5, 6, 7, 8, and 9, and in this rule.~~

ITEM 6. Amend paragraph **4.11(4)“b”** as follows:

b. A growler filled pursuant to this rule shall not be ~~delivered or~~ direct-shipped to a consumer.

ITEM 7. Rescind and reserve rule **185—4.33(123)**.

ITEM 8. Rescind and reserve rule **185—4.38(123)**.

ITEM 9. Amend subrule 5.1(7) as follows:

5.1(7) Hours of sale. A manufacturer of native wine ~~can~~ may sell its native wine in its native winery and in its retail establishments ~~on Mondays through Saturdays by the bottle for consumption off the native winery or retail establishment premises between the hours of 9 a.m. and 10 p.m. and on Sundays between the hours of 10 a.m. and 12 midnight~~ 2 a.m.